

Is it fair to bring Health Care Sector and Hospitals under service tax net? – Mar 2, 2010

THE Finance Bill, 2010 has proposed to introduce Section 65(105)(zzzz) in the Finance Act, 1994, which would bring the entire health care sector including hospitals, nursing homes and multi speciality clinics under the service tax net.

The taxable service, as proposed in the said Sub Section (zzzz) is defined to mean services rendered by any hospital, nursing home or multi-specialty clinic,—

(i) to an employee of any business entity, in relation to health check-up or preventive care, where the payment for such check-up or preventive care is made by such business entity directly to such hospital, nursing home or multi-specialty clinic; or

(ii) to a person covered by health insurance scheme, for any health check-up or treatment, where the payment for such health check-up or treatment is made by the insurance company directly to such hospital, nursing home or multi-specialty clinic;

This proposal will have manifold ramifications for the health care sector and will drastically affect the hospitals, the insurance companies and of course, the insured.

Firstly, the provisions are rather loosely worded. Clause (i) talks of the levy of service tax in a situation when the payment is made by the business entity directly to the hospital/nursing home/clinic which handle the check-up or preventive care of the employees of the business entity. Clause (ii) however, talks of the levy of service tax in a situation where, the payment is made by the insurance company directly to the hospital, etc. in respect of check-up or treatment effected to the insured. While the word 'treatment' is used on Clause(ii), we find no such usage in Clause (i). Hence, it seems that, when the business entity pays the amount directly to the hospital, etc. for the medical treatment of its employees, no service tax is attracted on the hospital, etc. On the other hand, if the hospital receives the payment from the insurance company directly, for the treatment of the insured, service tax would get attracted.

Secondly, the provisions make a distinction between 'preventive care' and 'treatment'. In practical parlance, the line of demarcation between preventive care and treatment is rather thin and illusory. Let me explain this with an example. Let's assume that a patient goes to a hospital for a regular check up and during the course of the investigations, it is found that, there exists a block in one of the arteries leading to his heart. Let's further assume that, the hospital immediately admits him and performs an open heart surgery. Will this case be one of 'preventive care' or 'treatment' or both?

Thirdly, these provisions are bound to create a lot of practical problems for the hospitals and nursing homes, in terms of raising of bills, etc. It is the normal practice for hospitals to issue one bill to the patient covering all charges from the date of admission of the patient till his discharge. It would be very difficult if not impossible to split the overall charges into preventive care and treatment charges.

Fourthly, it seems clear that the ultimate sufferer would be the individuals. The Insurance Companies are unlikely to bear the service tax cost (though, this can be deviated by these insurance companies) and are likely to pass on the service tax element to the corporates and the individuals who have taken insurance policies and it is very likely that the insurance premiums paid on medi-claim and other health care policies would go up significantly.

Fifthly and most importantly, the payments made by the Insurance Companies and the Corporates to the Hospitals include a significant portion towards the cost of the medicines and other goods, which are sold by the in-house dispensaries and medical stores. Now, as we know, these are goods which are subjected to the

levy of VAT in most cases. There would now be a double taxation in terms of levy of service tax on the value of medicines, etc.

Before parting..6tn6g

Currently, Hospitals and Nursing Homes are practically outside the service tax net, except when they render services involving cosmetic surgery or plastic surgery, which were brought into the service tax net in 2009. This proposal would effectively bring them into the service tax, as most of the cases these hospitals, etc. handle are covered by cashless mediclaim policies.

An individual paying directly to the hospital and then claiming a reimbursement from the Insurance Company does not have to bear service tax. But the insurance company paying the amount to the hospital for the same individual's treatment would need to bear the service tax. Will this anomaly the levy of service tax lead to the old system when individuals were required to meet their hospital expenses and then claim reimbursements?

Levy of service tax on Hospitals is not a good idea, especially, considering the fact that they render live saving services. The last thing these Institutions should be subjected to, is the levy of taxes such as service tax and the attendant issues and complications. Hospitals should be left to handle complicated medical cases and be preferably kept outside of complicated service tax issues.

Perhaps, the levy of service tax on Hospitals might prove to be a blessing in disguise for those hospitals who are run on leased premises, given the fact that service tax is charged by the landlords/lessors on the rentals and these can now be deviated by these hospitals.

How fair is it for you, Mr FM, to bring the entire health care industry and especially the hospitals, nursing homes and the multi speciality clinics into the service tax net even when the Task Force appointed by the 13 th Finance Commission has, in its report dated December 15, 2009 has recommended that health services should be exempted under the GST regime?

And lastly.... is health care a service? As per Wikipedia, Health Care is the treatment and management of illnesses, and the preservation of health through services offered by the medical, dental, complementary and alternative medicine, clinical sciences (*in vitro* diagnostics), nursing and allied health professions. Health care embraces all the goods and services designed to promote health, including "preventive, curative and palliative interventions, whether directed to individuals or to populations". Wikipedia adds that the definition of health care is continuously evolving, and varies significantly between different cultures.

I don't think that, from a common man's standpoint, health care can be treated as a service, especially in a culture like India, where we are repeatedly told by our scriptures that service rendered to fellow human beings is service rendered to God himself and where the health care system is treated as a veda, viz. Ayurveda.

Levy of service tax would significantly increase the cost of health care, for sure.